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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SHARON LOUISE PEREIDA,

Plaintiff and Respondent,

v.

ZINA DOLJENKO,

Defendant and Appellant.

SHARON LOUISE PEREIDA,

Plaintiff and Respondent,

v.

GENNADY DOLZHENKO,

Defendant and Appellant.

B287733 (consol. w/B287741)

(Los Angeles County
Super. Ct. Nos. 17PDRO00870,
17PDRO00869)

APPEALS from orders of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Affirmed.

Zina Doljenko, in pro. per., for Defendant and Appellant.

Gennady Dolzhenko, in pro. per., for Defendant and Appellant.

Sharon Louise Pereida, in pro. per., for Plaintiff and Respondent.

In these consolidated appeals, defendants and appellants Zina Doljenko (Doljenko) and Gennady Dolzhenko (Dolzhenko) (collectively Defendants) appeal civil harassment restraining orders after hearing that were obtained by plaintiff and respondent Sharon Pereida (Pereida) pursuant to Code of Civil Procedure section 527.6.^{1 2}

The issues presented include whether substantial evidence supports the trial court's determination that unlawful harassment existed, so as to entitle Pereida to an order prohibiting harassment. We perceive no error in the trial court's rulings and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On November 3, 2017, Pereida filed separate ex parte applications for civil harassment restraining orders against the two Defendants. Pereida alleged: She met Defendants at an airport Starbucks, they were homeless, and she invited them to

¹ Unless otherwise specified, all statutory references are to the Code of Civil Procedure.

² A restraining order issued pursuant to section 527.6 is appealable as an order granting an injunction. (§ 904.1, subd. (a)(6); *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 187.)

stay temporarily at her office; after she asked them to leave, they slammed the office door on her foot and threatened her.

On November 3, 2017, the trial court issued temporary restraining orders requiring Defendants to stay 100 yards away from Pereida, her home, and her workplace, among other locations.

Thereafter, Defendants filed ex parte applications to vacate the temporary restraining orders, to “take possession of the premises as it was before the unlawful eviction,” and to recover their personal property.

The matter came on for trial on December 21, 2017. Pereida testified: Defendants were homeless, and in July 2017 she allowed them to stay temporarily in her office, next to her thrift shop. On November 1, when she tried to enter her office, they slammed the door on her foot to deny her entry, resulting in a bruise. They also threatened her, causing her to be afraid of them. On November 3, she obtained the temporary restraining orders, and on November 16, the LAPD escorted Defendants off the premises. As for Defendants’ personal property, it had been removed and placed in storage, and it was available to be picked up.

Defendants, in turn, denied they were residing in Pereida’s office. Doljenko testified that pursuant to an oral agreement, she and her brother, Dolzhenko, were renting Pereida’s office to start an electronic consultant business, and that they had been paying rent of \$200 per month in cash.

At the conclusion of the hearing, the trial court expressly found that Pereida was credible, that Defendants were not credible, and that “through the goodness of her heart, [Pereida] allowed [Defendants] to stay or to occupy her business office

because she thought [they] were homeless. [¶] I find that [Defendants] made it difficult, if not impossible, for her to enter her own premises. And [Defendants] attempted by force and fear to keep her out of her own premises. [Defendants] ha[d] threatened her and . . . done harm to her.”

The trial court entered three-year restraining orders prohibiting Defendants from coming within 100 yards of Pereida. The trial court also denied Defendants’ ex parte applications. These appeals followed.

CONTENTIONS

Defendants contend: the trial court, as a civil harassment court, lacked subject matter jurisdiction to evict them; a single act of harassment is not a course of conduct, making the restraining orders unlawful; the trial court failed to apply the clear and convincing evidence standard of proof; the restraining orders are not supported by substantial evidence because Pereida did not suffer bodily injury and failed to establish credible threats of violence. Dolzhenko also contends the trial court violated his right to due process in the conduct of the trial.

DISCUSSION

1. General principles.

a. The pertinent statute.

A person who has suffered harassment may obtain an order prohibiting harassment. (§ 527.6, subd. (a)(1).) Harassment is defined as “unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial

emotional distress, and must actually cause substantial emotional distress to the petitioner.” (§ 527.6, subd. (b)(3).)

Course of conduct means “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose” (§ 527.6, subd. (b)(1).)

If the “judge finds by clear and convincing evidence that unlawful harassment exists, an order shall issue prohibiting the harassment.” (§ 527.6, subd. (i).)

b. *Standard of appellate review.*

“The appropriate test on appeal is whether the findings (express and implied) that support the trial court’s entry of the restraining order are justified by substantial evidence in the record. (*Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1137-1138 [injunctions under § 527.6 are reviewed to determine whether factual findings are supported by substantial evidence; trial court’s determination of controverted facts will not be disturbed on appeal].) But whether the facts, when construed most favorably in [petitioner’s] favor, are legally sufficient to constitute civil harassment under section 527.6 . . . [is] subject to de novo review. [Citations.]” (*R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 188, fn. omitted.)

2. *No merit to Defendants’ arguments on appeal.*

Defendants contend the trial court, as a civil harassment court, lacked subject matter jurisdiction over eviction matters and was not authorized to order eviction pursuant to section 527.6 because the legal remedies to compel eviction are available only in the unlawful detainer court. The argument is meritless because section 527.6 authorizes the trial court to issue a restraining order that enjoins a party from “coming within a specified distance of, or disturbing the peace of, the petitioner.”

(§ 527.6, subd. (b)(6)(A).) Therefore, the trial court had jurisdiction to order Defendants to stay at least 100 yards away from Pereida's office.

Defendants contend that a restraining order prohibiting harassment requires a "course of conduct," and here, Pereida merely alleged a single act of harassment on November 1, 2017, arising out of the altercation at her office. The argument fails. As noted, the statute defines "course of conduct" as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose[.]" (§ 527.6, subd. (b)(1).) Here, the evidence showed that on November 1, 2017, Defendants barred Pereida from her office by slamming the door on her foot, and that they later threatened her—at the time they were forced to depart the premises, they stated " 'we'll be back,' " which placed Pereida in fear for her safety. On this record, the trial court properly determined that Defendants engaged in the requisite course of harassing conduct.

Defendants' contention that the trial court incorrectly applied the preponderance standard, rather than the clear and convincing evidence standard (§ 527.6, subd. (i)), is without merit. In the absence of "evidence to the contrary, we presume the trial court knew and properly applied the law. [Citations.]" (*McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1122.) Here, Defendants assert the face of the December 21, 2017 minute order establishes that the trial court applied the wrong standard of proof. The minute order shows nothing of the kind. Therefore, we presume the trial court properly applied the statutory clear and convincing evidence standard.

Next, Defendants challenge the sufficiency of the evidence to support the restraining orders. They contend Pereida did not suffer bodily injury in the November 1, 2017 altercation, and that there was no credible threat of violence. The arguments are meritless. Section 527.6 does not require bodily injury for a restraining order to issue, and in any event, the evidence showed that Pereida was injured when Defendants slammed the office door on her foot. Further, Pereida testified that Defendants' threats placed her in fear for her safety, and it is not this court's role to reweigh the evidence with respect to whether there was a "[c]redible threat of violence." (§ 527.6, subd. (b)(2).)³

Finally, Dolzhenko contends the trial court violated his right to due process by ruling on the matter without ever calling his case, denying him the right to testify, to conduct cross-examination of Pereida, or to make a closing argument. The reporter's transcript does not support his argument. The record reflects that Pereida's cases against the two Defendants were called together, that Dolzhenko was present at and participated in the trial, that he offered an exhibit that was marked for identification, and that the trial court invited him to testify. At that juncture, Dolzhenko requested a certified interpreter because he speaks a language other than English. The trial court

³ " 'Credible threat of violence' is a 'knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family, and that serves no legitimate purpose.' " (§ 527.6, subd. (b)(2).)

denied the request as untimely, noting that Dolzhenko had failed to request an interpreter prior to the hearing.⁴

The record does not support Dolzhenko's claim that the trial court precluded him from testifying, cross-examining Pereida, or presenting closing argument. Dolzhenko's limited participation at trial was the result of his belated request for an interpreter. There was no due process violation.

⁴ The trial court also observed that for "the last hour or so," Dolzhenko had been interpreting everything that had been said to Dolzhenko.

DISPOSITION

The December 21, 2017 civil harassment restraining orders after hearing are affirmed. Pereida shall recover her costs on appeal.

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EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.